

SUPREME COURT OF WISCONSIN

Clean Wisconsin, Inc. v. DNR

2021 WI 72 · No. 2018AP59 · Decided July 8, 2021

SUMMARY

The Wisconsin Supreme Court held that the Wisconsin Department of Natural Resources has authority to consider the environmental effects of proposed high-capacity groundwater wells even when a formal environmental review is not required by statute. The court concluded that Wis. Stat. § 227.10(2m) did not alter its prior holding in *Lake Beulah Management District v. DNR* because the DNR's authority was explicitly granted by statute. The court modified and affirmed the circuit court's judgment and remanded all eight well applications to the DNR.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Rebecca Frank Dallet, J.; Ann Walsh Bradley, J.; Rebecca Grassl Bradley, J.; Brian Hagedorn, J. (did not participate); Patience Drake Roggensack, J.; Annette Kingsland Ziegler, C.J.; Jill M. Karofsky, J.
JURISDICTION	Wisconsin
DECIDED	July 8, 2021
DOCKET	2018AP59
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Certified appeal from a Dane County Circuit Court judgment and order reviewing the Wisconsin Department of Natural Resources' approval of eight high-capacity groundwater-well applications.
STANDARD OF REVIEW	The scope of an agency's statutory authority and statutory interpretation are reviewed de novo. In reviewing an agency decision under Wisconsin Statutes chapter 227, the court generally upholds the decision unless the agency erroneously interpreted a provision of law. If the correct interpretation does not compel a particular action, the court remands to the agency for further action under the correct interpretation.
PRECEDENTIAL VALUE	binding
PARTIES	Wisconsin Department of Natural Resources, Wisconsin Manufacturers & Commerce, Dairy Business Association, Midwest

Food Processors Association, Wisconsin Potato & Vegetable Growers Association, Wisconsin Cheese Makers Association, Wisconsin Farm Bureau Federation, Wisconsin Paper Council, Wisconsin Corn Growers Association v. Clean Wisconsin, Inc., Pleasant Lake Management District

TOPICS

administrative law judicial review of agency action environmental law statutory interpretation
appellate procedure

PRACTICE AREAS

administrative law environmental law water law appellate procedure

QUESTIONS PRESENTED

1. Whether Wisconsin Statutes section 227.10(2m) prohibits the DNR from considering the potential environmental effects of a proposed high-capacity well when consideration is not required by Wisconsin Statutes section 281.34(4).
2. Whether Wisconsin Statutes section 281.34(5m) bars Clean Wisconsin's claims.

HOLDINGS

1. Section 227.10(2m) does not prohibit the DNR from considering the potential environmental effects of a proposed high-capacity well even when formal environmental review is not required by section 281.34(4). The legislature explicitly granted the DNR broad authority to consider those effects through sections 281.11, 281.12, 281.34, and 281.35.
2. Section 281.34(5m) does not bar Clean Wisconsin's claims because the claims are based on the DNR's consideration of the potential environmental impacts of the wells, not on a lack of consideration of cumulative environmental impacts.
3. The erroneous statutory interpretation did not compel approval or denial of the permits. The circuit court properly vacated the DNR's approvals, but the matter had to be remanded for the DNR to exercise its discretion and expertise after considering the wells' environmental effects.

KEY QUOTATIONS

“We unanimously rejected those arguments, holding that the DNR has both a constitutional duty and the statutory authority to consider the environmental effects of all proposed high capacity wells.” (¶ 17)

“We hold that Wis. Stat. § 227.10(2m) does not alter our analysis or conclusion in Lake Beulah. The DNR's authority to consider the environmental effects of proposed high capacity wells, while broad, is nevertheless explicitly permitted by statute.” (¶ 21)

“Section 227.10(2m) does not, however, strip an agency of the legislatively granted explicit authority it already has.” (¶ 24)

“That error, however, does not compel the DNR to either approve or deny the permits.” (¶ 32)

FACTUAL BACKGROUND

The case concerned eight applications for high-capacity groundwater wells filed between March 2014 and April 2015. The DNR determined that formal environmental review was not statutorily required for these wells, but it nevertheless identified potential adverse environmental effects; for seven applications it completed environmental review and found potential adverse effects on waters protected by the public trust doctrine. After the DNR adopted a 2016 attorney general opinion interpreting Wisconsin Statutes section 227.10(2m) to restrict its authority, it approved all eight applications without environmental conditions.

PROCEDURAL HISTORY

The DNR approved eight high-capacity-well applications without conditions after determining that it lacked authority to consider environmental effects except when formal review was required by statute. Clean Wisconsin sought judicial review under Wisconsin Statutes chapter 227. The Dane County Circuit Court vacated seven approvals and remanded the eighth application. The DNR and intervening business associations appealed, and the court of appeals certified the matter to the Wisconsin Supreme Court. The supreme court modified and affirmed the circuit court's judgment and order and remanded all eight applications to the DNR.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment and order of the circuit court were modified and affirmed. The circuit court was instructed to remand all eight well applications to the DNR. On remand, the DNR must consider the proposed wells' environmental effects and then use its discretion and expertise to determine whether to approve or deny the applications.

CASES CITED

- Lake Beulah Management District v. DNR, 2011 WI 54
- Papa v. DHS, 2020 WI 66
- Applegate-Bader Farm, LLC v. DOR, 2021 WI 26
- Moreschi v. Village of Williams Bay, 2020 WI 95
- Myers v. DNR, 2019 WI 5
- Hilton v. DNR, 2006 WI 84
- Movrich v. Lobermeier, 2018 WI 9
- Diana Shooting Club v. Husting, 156 Wis. 261, 145 N.W. 816
- Muench v. PSC, 261 Wis. 492, 53 N.W.2d 514
- Rock-Koshkonong Lake District v. DNR, 2013 WI 74
- R.W. Docks & Slips v. State, 2001 WI 73

- Nekoosa Edwards Paper Co. v. R.R. Commission, 201 Wis. 40, 228 N.W. 144
- Wisconsin's Environmental Decade, Inc. v. DNR, 85 Wis. 2d 518, 271 N.W.2d 69
- Wisconsin Department of Justice v. DWD, 2015 WI 114
- Clean Wisconsin, Inc. v. DNR, No. 2016AP1688, slip op. (Wis. S. Ct. July 8, 2021)

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